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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,723	03/04/2005	Ernst-Walter Schmitt	785-012144-US (PAR)	7871
2512	7590	06/12/2006	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			TRUONG, THANH K	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/526,723

Applicant(s)

SCHMITT, ERNST-WALTER

Examiner

Thanh K. Truong

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-4-05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. The abstract of the disclosure is objected to because it does not adequately provide the technical disclosure for the understanding of how the apparatus organizes and operates. Correction is required. See MPEP § 608.01(b).

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following claimed

features must be shown or the feature(s) canceled from the claim(s). No new matter should be entered:

A motor or a pneumatic cylinder (as recited in claim 8);

A thermoforming packaging machine (as recited in claim 9); and

A cutting means, a sealing means, a forming means or a filling machine (as recited in claim 10).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 2-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification and drawings clearly disclose that the packaging item support means (2) comprises two cables (side by side), however, claim 2 recites: "the packaging item support means is at least one cable". Accordingly, it is unclear whether the present claimed invention would perform properly or would even work at all with only one cable.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "a displacement unit" and "a support means", but it does not provide any structure limitations. It is unclear what are the claimed structure limitations.

The phrase “plug-in strips”, in claim 5, is vague and indefinite, because it is unclear what is a “plug-in strips”. The disclosure does not provide sufficient disclosure for one to better understand the structure limitation of a “plug-in strips”.

The phrase “a means”, in claim 7, is vague and indefinite, because it is unclear what is the applicant referring and what is the structure limitation of “a means”.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hackenberg (DE 3809659).

Hackenberg discloses an apparatus comprising: a displacement unit (12) and a support means (2) is arranged on the displacement unit (figure 1).

Claim 1 recites a packaging machine, however, in the body of the claim, there is no structure limitation of a packaging machine is being claimed. Therefore, the recitation “a packaging machine” in the preamble has not been given patentable weight. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190

USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Hackenberg further discloses (figure 1):

the support means is at least a cable (2); each cable comprises a first and a second end which are each arranged on the displacement unit (12); rollers (4, 5, 8-10); a means (11) with which the cable may be tensioned; wherein the tension is assigned to each cable; and the displacement unit is driven by a motor (3).

10. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by J. Vetter (4,033,092).

Vetter discloses (figure 1) an apparatus comprising: a displacing unit (1, 2, 3), a support means (10) is arranged on the displacement unit.

Vetter further discloses:

the support means is at least one cable (the chain 10, 10' is construed as cable - *cable, originally wire cordage of great strength or heavy metal chain used for hauling, towing, supporting the roadway of a suspension bridge, or securing a large ship to its anchor or mooring. Encyclopedia information about **cable** The Columbia Electronic Encyclopedia, Sixth Edition Copyright © 2003, Columbia University Press.*);

each cable comprises a first and a second end (not numbers) which are each arranged on the displacement unit (figure 1);

rollers (7, 9, 39, 40) with which the cable is deflected;

the rollers are arranged by means of plug-in strips (as best understood) on the frame (4) of the packaging machine;

the displacement unit comprises at least one means (16, 17) with which the cable may be tensioned (it is construed that as means (16, 17) reciprocated, the cable (10, 10") may be tensioned, because of the force of the rollers (7, 9) acted upon the cable);

means (16, 17) is assigned to each cable;

the displacement unit is driven by a pneumatic cylinder (11);

wherein the packaging machine is a thermoforming packaging machine (figure 1); and

the displacement unit is a cutting means (3).

### ***Conclusion***

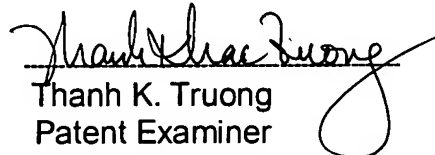
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Thanh K. Truong  
Patent Examiner  
June 8, 2006.